REMARKS / ARGUMENTS

Claims 22, 25, 37, 39, 44-45, 47, 52-53 and 55-58 remain pending in this application. Claims 28 and 42 have been canceled without prejudice or disclaimer. New claims 57 and 58 have been added.

Information Disclosure Statement

Applicants respectfully request that the Examiner initial and return a copy of page 4 of the PTO-1449 Form filed on June 7, 2002 as well as page 2 of the PTO-1449 Form filed on February 9, 2000. Copies are enclosed for the Examiner's convenience.

35 U.S.C. §112

Claims 22, 25, 28, 37, 42, 44, 45, 47, 52, 53, 55 and 56 stand rejected under 35 U.S.C. §112. Although Applicant believes that the claims do not need to be amended, claims 22 and 39 have nonetheless been amended to overcome this rejection.

35 U.S.C. §103

Claims 22, 25, 28, 37, 39, 42, 44, 45, 47, 52, 53, 55 and 56 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Colvin et al (U.S. Patent No. 5,637,389) in view of Ogden (U.S. Patent No. 5,727,336) and further in view of Harada et al (U.S. Patent No. 4,894,932). These rejections are traversed as follows.

Claim 22, as amended, is directed to a technical footwear article having an integral or removable portion that includes a layer of breathable, open cell foam having reversible enhanced thermal properties by application of phase change molecules (PCMs) that adjust to temperature changes. The layer of foam functions to transfer moisture vapor therethrough. A moisture transferring non-woven material is attached to the foam such that the moisture vapor is absorbed from the foam and thereafter transferred through the non-woven material. Claim 39 contains similar limitations but does not specify that the foam has reversible enhanced thermal properties. Therefore, in the claim structure, the foam must be breathable and transfer moisture vapor. In addition, the non-woven material should be able to absorb the moisture vapor from the foam and transfer this moisture vapor through the non-woven material. This permits an individual wearing the footwear to be comfortable when engaged in certain activities that generate moisture. The further limitation in claim 22 directed to reversible enhanced thermal properties provides heating and cooling for further comfort of the individual.

None of the cited references whether taken individually or in combination disclose the above-mentioned features of the present invention. Colvin et al mainly discuss the use of phase change molecules as an insulation. Although Colvin et al disclose footwear liners, it is clear from their disclosure that the primary purpose of their invention is insulation and not moisture transfer (see column 1, lines 13-21). While Colvin et al disclose that the foam may be closed cell or open cell, one of ordinary skill in the art would not conclude that Colvin et al intend to disclose a moisture transferring foam.

Furthermore, Colvin et al clearly do not disclose a non-woven material that absorbs moisture from the foam and then transfers this moisture therethrough. The Examiner apparently relies upon Ogden et al for disclosing this combination of layers. Applicant respectfully disagrees. Ogden discloses an apertured top layer that protects a foot from blistering and other discomfort caused by movement of the foot with respect to a sock (see column 6, lines 37-40). A non-woven layer is provided under this apertured top layer in order to absorb moisture. A foam layer is provided below the non-woven layer in order to provide cushioning. Therefore, Ogden discloses a non-woven layer that absorbs moisture from an apertured top layer and is positioned adjacent to a foam layer that provides cushioning. Ogden does not disclose a breathable, moisture transferring foam from which moisture is absorbed by a non-woven material and thereafter transferred through the non-woven material. The recitation of reversible enhanced thermal properties, in claim 22,

further defines the present invention from the attempted combination of Ogden and Colvin et al. The Examiner's argument that, since Ogden recites a foam and a nonwoven, the function performed must inherently be the same as in the presently claimed invention cannot be maintained.

At the bottom of page 5 of the Office Action, the Examiner refers to the use of the phrase "capable of". However, Applicant wishes to point out to the Examiner that there is no such language in any of the claims elected for examination.

Furthermore, while the Examiner refers to Harada et al on page 4 of the Office Action, Harada et al is not specifically applied to any of the claims in the remaining portion of the Office Action. Nonetheless, Applicant points out that Harada et al is directed to an air permeable shoe having a rubber foam. The attempted combination of Colvin et al, Ogden and Harada et al still fails to disclose or suggest the presently claimed invention.

Double Patenting Rejection

Claims 22, 25, 28, 37, 39, 42, 44, 45, 47, 52, 53, 55 and 56 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being over claims of co-pending Application Nos. 10/757,454 and 10/600,711. Without admitting to the propriety of this rejection, a terminal disclaimer is hereby submitted to avoid the rejection.

Conclusion

In view of the foregoing, Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C.

By _____
Shrinath Malur
Reg. No. 34,663
(703) 684-1120